

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 20-cr-262

Plaintiff,

vs. August 27, 2021
11:02 a.m.

CHRISTIAN FERGUSON,

Defendant.

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 FRIDAY, AUGUST 27, 2021, 11:02 A.M.

2 THE COURT: You may be seated.

3 THE CLERK: Your Honor, the case before the
4 Court carries Case Number 5:20-cr-262, United States of
11:03:00 5 America versus Christian Ferguson.

6 THE COURT: Good morning.

7 MR. RICOTTA: Good morning, Your Honor.

8 MR. BROWN: Good morning, Your Honor.

9 THE COURT: I'm going to take off the mask
11:03:08 10 so I can talk, but we still do require masks throughout
11 the facility.

12 We are trying to control, you know, the
13 Coronavirus as much as possible and trying to ensure it
14 doesn't spread here, and so that's what we do require.

11:03:28 15 The lawyers are allowed to have their masks
16 off if they are presenting, and if the defendant has to
17 speak he can do the same, but otherwise there is a
18 requirement. But I should also be clear that I've had my
19 two shots, so to the extent that makes any difference, I
11:03:52 20 would want you to know that.

21 Mr. Ferguson, have you had your
22 vaccination?

23 THE DEFENDANT: I beg your pardon?

24 THE COURT: I say have you had your
11:04:03 25 vaccinations?

1 MR. RICOTTA: Were you vaccinated?

2 THE DEFENDANT: Oh. No, sir.

3 THE COURT: Okay. I just wanted to know.

4 And I ask defendants that and I ask

11:04:10 5 witnesses that because if not, and it comes your time to
6 talk, if you can speak with that on, I would allow you to
7 keep it on.

8 All right?

9 THE DEFENDANT: Yes, sir.

11:04:22 10 THE COURT: Okay. All right. This is the
11 sentencing hearing in Mr. Ferguson's case.

12 Let me have counsel for the United States
13 introduce themselves for the record.

14 MR. BROWN: Thank you, Your Honor.

11:04:38 15 I'm taking my mask off briefly. I am fully
16 vaccinated.

17 For the United States of America, Duncan
18 Brown joined with Jerome Teresinski.

19 MR. TERESINSKI: Good morning, Your Honor.

11:04:51 20 MR. BROWN: And also Kurt Durker of the
21 FBI.

22 THE COURT: Good morning.

23 Let me have counsel for Mr. Ferguson
24 introduce himself for the record.

11:04:58 25 MR. RICOTTA: Yes, Your Honor.

1 John Ricotta for Christian Ferguson.

2 THE COURT: All right.

3 MR. RICOTTA: Good morning, everyone.

4 THE COURT: Good morning.

11:05:03 5 And Mr. Ferguson is seated to your right?

6 MR. RICOTTA: Yes, sir.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right.

9 MR. RICOTTA: Say good morning.

11:05:11 10 THE DEFENDANT: Good morning.

11 THE COURT: All right. Mr. Ricotta, did
12 you go over the presentence investigation report with
13 Mr. Ferguson?

14 MR. RICOTTA: Yes, we've gone over it
11:05:21 15 several times, Your Honor.

16 THE COURT: All right. Mr. Ferguson, you
17 heard your counsel say he went over the report with you.
18 Is that correct?

19 THE DEFENDANT: Yes, Your Honor.

11:05:27 20 THE COURT: And, Mr. Brown, did you review
21 the report?

22 MR. BROWN: Yes. Yes, Your Honor, the
23 Government has reviewed the report.

24 THE COURT: All right. So Mr. Ricotta
11:05:38 25 filed several objections on behalf of the defendant that

1 I have to resolve, and Mr. Brown, I think, also filed at
2 least one, one objection.

3 So, Mr. Ferguson, let me just start out by
4 saying that we have Sentencing Guidelines in the Federal
11:05:54 5 Court. They are advisory, they're not mandatory, but I
6 still have to seriously consider the Guidelines as well
7 as other factors.

8 And so in order for me to determine the
9 Guideline range, which is what we start with before we
11:06:12 10 determine other things, I have to determine two things.
11 One is called the offense level. That's the number that
12 gets associated with the crime that you've been convicted
13 of.

14 The higher the number associated with the
11:06:23 15 crime, the more time a person faces, all things being
16 equal.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: So I have to come to some
11:06:30 20 conclusion about what is that number. It's as if crimes
21 are ranked, and so -- thank you -- it's as if crimes are
22 ranked, so the higher the number, the more time a person
23 faces.

24 The other thing I have to look at is your
11:06:46 25 background to determine your criminal history category.

1 All defendants are placed in one of six
2 categories. One is the best category to be in if you're
3 going to be sentenced. Six is the worst category. And
4 so if two people came to Court and had committed the same
11:07:05 5 crime, the person with the higher criminal history
6 category is likely to face more time than the person in
7 the lower category, all things being equal.

8 Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

11:07:12 10 THE COURT: And the categories are based on
11 prior criminal convictions of defendants that count.

12 And so obviously the person who's had a
13 very substantial number of criminal convictions that will
14 count under the Guidelines will be in a higher category
11:07:30 15 than a person who didn't have any or, you know, fewer.

16 You understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: So that's -- that's how we go
19 about doing it.

11:07:38 20 So eventually, I've got to get to that
21 number, and I've got to get to your criminal history
22 category. Then I'll announce the Guideline range, and
23 then your counsel will get a chance to make arguments,
24 some of which he's already put in a memorandum on your
11:07:53 25 behalf.

1 And then if you wish to speak, you'll have
2 a right to speak yourself, but you're not required to say
3 anything.

4 And then the Assistant United States
11:08:03 5 Attorney, Mr. Duncan Brown or Mr. Teresinski, will speak
6 on behalf of the United States before I make a decision.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And let me have the
11:08:12 10 Pretrial/Probation Officer introduce herself for the
11 record.

12 THE PROBATION OFFICER: Good morning, Your
13 Honor.

14 Kristin Merrill for the U.S. Pretrial
11:08:21 15 Services and Probation Office, and then my supervisor
16 David Abraham is also here with me.

17 THE COURT: All right. And then I'll have
18 some questions for them, I'm sure -- probably not many --
19 as we go because of the nature of the case and
11:08:32 20 circumstances.

21 So that's how we're going to proceed.

22 Now, turning to the presentence
23 investigation report in this case -- by the way, before
24 we start, Mr. Abraham, I just want you to be thinking
11:08:51 25 about this, and Ms. Merrill, what prison facilities are

1 there that are available to assess mental health or to
2 house a person who might have some mental health-related
3 issues?

4 Have you thought about that?

11:09:10 5 THE PROBATION OFFICER: Well, Your Honor,
6 they typically -- they initially would go to Butner which
7 is -- typically they'll initially go to Butner where
8 they're assessed at that time, and then they will be
9 shipped to a facility after the evaluation period that
11:09:27 10 can handle the mental health needs specifically of the
11 defendant.

12 But we would have to look into which
13 facility would be available for that, but the BOP makes
14 that determination.

11:09:37 15 THE COURT: Okay. I just ask that.

16 I want all the information that I can get
17 in front of me --

18 THE PROBATION OFFICER: Yes.

19 THE COURT: -- here.

11:09:48 20 So, all right, let's go to the
21 determination of offense level.

22 And the base offense level here, the number
23 we start out with, is 32, and I don't think there's any
24 disagreement at this point by the counsel over that.

11:10:20 25 Is that correct?

1 MR. BROWN: No objection from the
2 Government, that's correct, Your Honor.

3 THE COURT: Mr. Ricotta.

4 MR. RICOTTA: That's accurate, Your Honor.

11:10:28 5 THE COURT: All right. Now, let's work our
6 way through the rest of it.

7 The Pretrial/Probation Officer recommended
8 that I apply a two-level increase because a dangerous
9 weapon was used, and the reasoning of the officer was
11:10:46 10 that in preparation of the offense, that the defendant
11 possessed an AR-style rifle and that his expressed
12 intention was to harm or kill law enforcement officers.

13 And the Pretrial/Probation Officer
14 indicates that on a certain date, May 2nd, that he
11:11:08 15 brought the weapon to a planning meeting.

16 So the Pretrial/Probation Officer responded
17 to the objection by Mr. Ricotta on behalf of the
18 defendant, and Mr. Ricotta points to United States
19 Sentencing Guideline 2A4.1, Application Note 2, which
11:11:41 20 says, "'A dangerous weapon used' means that a firearm was
21 discharged, or a firearm or dangerous weapon was
22 otherwise -- was otherwise used."

23 And the officer goes to the section,
24 Sentencing Guideline 1B1.1, Application Note J, for the
11:12:07 25 definition of "Otherwise used" in respect to a dangerous

1 weapon. And it says, "The conduct did not amount to the
2 discharge of a firearm but was more than brandishing,
3 displaying or possessing a firearm or other dangerous
4 weapon."

11:12:28 5 And the Pretrial/Probation Officer
6 indicates that during the planning stages of the offense,
7 that he brought the firearm to the meeting on May 2nd,
8 2020, and he showed the weapon to the confidential
9 source.

11:12:44 10 And that it was a firearm that could be
11 physically manipulated and it was confirmed it was a
12 firearm, and then they were aware that he continued to
13 possess the firearm; that is the Government agents, and
14 that he would have brought the rifle to the dry run on
11:13:06 15 May 8th, 2020.

16 He didn't -- he didn't bring it because it
17 was a controlled meeting, and then so the -- the
18 officer's conclusion is that defendant's actions
19 demonstrated intent to use the firearm; therefore, the
11:13:28 20 report remains unchanged in this regard.

21 So I've, of course, reviewed the relevant
22 sections starting with the 2A4.1, and this has to do with
23 the kidnapping, abduction, unlawful restraint Guideline,
24 and at A3 it says, "If a dangerous weapon was used,
11:14:13 25 increase by two levels."

1 And then looking at Application Note 2, it
2 says, "'A dangerous weapon was used' means that a firearm
3 was discharged, or a firearm or dangerous weapon was
4 otherwise used."

11:14:37 5 And so there's no question it wasn't
6 discharged, and so the question goes to that "Otherwise
7 used" section that the Pretrial/Probation Officer talked
8 about.

9 The "Otherwise used" language, as I
11:14:56 10 mentioned, says that the conduct does not amount to the
11 discharge but was more than brandishing, displaying or
12 possessing a firearm or other dangerous weapon.

13 I'm prepared to rule on the papers here,
14 but if -- if you want to say anything further,
11:15:22 15 Mr. Ricotta, you may, or Mr. Brown. But I'm prepared to
16 rule on this otherwise.

17 MR. RICOTTA: Well, I would simply say,
18 Your Honor, I mean, it seems clear from the language
19 itself that it shouldn't be difficult to make that
11:15:37 20 assessment.

21 It's certainly he didn't have a weapon on
22 May 7th, that's clear. So the only other date that we
23 could be concerned about is this May 2nd date when he
24 apparently brought the --

11:15:49 25 THE COURT: Right.

1 MR. RICOTTA: -- AR to this, to the camp
2 and showed it to the confidential informant.

3 So even if we looked at Ms. Merrill's
4 argument under the 1B1.1, he didn't do anything more than
11:16:06 5 brandish or show or display it. It simply doesn't equate
6 to discharge.

7 And so I think under either argument, under
8 the May 7th or -- May 7th or May 2nd, a weapon should not
9 be an enhancement here.

11:16:21 10 And I'd be concerned because the Bureau of
11 Prisons looks upon a weapon as a -- it could preclude him
12 from a lot of programs, and I don't want to have any
13 weapons involved in this particular matter.

14 So I'd be strenuously objecting to this
11:16:37 15 enhancement, Your Honor.

16 THE COURT: Okay. And you are reserving
17 that and I'm just ready to rule, but I decided I'd
18 better, if counsel had anything to say, they could say it
19 quickly and then I'm ready to rule on that.

11:16:48 20 MR. BROWN: Your Honor, I'll be very brief.

21 The Government argues that, like
22 Mr. Ricotta said, it's very clear, given the facts of the
23 case, that it was -- however, we take the different
24 conclusion that it was more than mere brandishing or
11:17:00 25 possessing.

1 He showed up with a loaded firearm and that
2 was a show of his commitment to carry through with the
3 plot.

4 He then also described in great detail sort
11:17:11 5 of the placement of people in the plot.

6 So the gun was more than just a mere
7 brandishing or possession, it was a display or commitment
8 to further the attempt.

9 Thank you.

11:17:22 10 THE COURT: All right. I'm going to
11 sustain the objection of the defendant on this one.

12 Of course, the facts here are relatively
13 unique in terms of the kinds of cases that I've seen, and
14 this is where the defendant was charged with attempted
11:17:41 15 kidnapping where actually it never really got to the
16 stage that one normally thinks of a kidnapping because
17 the plot was called off.

18 The day that he went and did the dry run,
19 there was no weapon available. He had no weapon with him
11:17:58 20 at all.

21 And brandishing is pretty serious in the
22 law when we talk about, you know, particular crimes. It
23 generally contemplates when someone's robbing a bank or
24 doing something else that's really pretty concrete, and
11:18:13 25 the question is they've got a firearm; are they

1 brandishing it, displaying it or possessing it.

2 And this, this Application Note 1B1.1
3 says -- let me just -- (j), he didn't discharge the
4 firearm. We said that already. But it was more, more
11:18:48 5 than brandishing the firearm in the context of an
6 attempted kidnapping, one, which is not -- we don't have
7 the typical scenario. That would be someone who has a
8 gun out but doesn't shoot it, someone who displays a gun
9 but doesn't shoot it, and at a minimum, possessing that
11:19:12 10 weapon in the context of when that's being carried out.

11 So the earlier session where they're
12 talking about a firearm, he's got one, we're not even to
13 the dry run. And so I don't -- I think it would be a
14 stretch to say that he should get that, that enhancement
11:19:32 15 under these circumstances.

16 So I will -- I will sustain the objection
17 on that.

18 Mr. Ricotta, you had an objection relative
19 to acceptance of responsibility.

11:20:11 20 Right?

21 MR. RICOTTA: Yes, Your Honor.

22 THE COURT: And did you have anything other
23 than that that's left to be decided?

24 MR. RICOTTA: Other than, Your Honor, my
11:20:23 25 understanding of the 3E1.1 is that anytime up until prior

1 to sentencing, the defendant can make his acceptance of
2 responsibility statement.

3 THE COURT: I understand. I'm getting
4 ready to deal with that one.

11:20:38 5 That's the last one you have relative to
6 offense level, is that right?

7 MR. RICOTTA: That's correct.

8 THE COURT: Okay.

9 MR. RICOTTA: I'm sorry.

11:20:44 10 THE COURT: No, that's okay.

11 So ordinarily, defendants are not given
12 credit for acceptance of responsibility when they've gone
13 to trial and put the Government to proof, but the
14 Guideline does say that there are occasional exceptions,
11:21:10 15 and so let me just turn to that.

16 So we're looking at 3E1.1 of the
17 Guidelines, and (a) says if defendant clearly
18 demonstrates acceptance of responsibility, decrease the
19 offense level by two.

11:22:03 20 And then we also know, at least as counsel
21 and the Court, that it can be three if a person pleads --
22 and this is normally pretrial -- and the Government
23 attests that the person has met the requirements of (b).

24 Then 2 says, "This adjustment is not
11:22:25 25 intended to apply to a defendant who puts the Government

1 to its burden of proof at trial by denying the essential
2 factual elements of guilt, is convicted, and only then
3 admits guilt and expresses remorse. Conviction by trial,
4 however, does not automatically preclude a defendant from
11:22:42 5 consideration for such a reduction. In rare situations,
6 a defendant may exercise his constitutional right to a
7 trial. This may occur, for example, where a defendant
8 goes to trial to assert and preserve issues that do not
9 relate to factual guilt, e.g., to make a constitutional
11:23:07 10 challenge to a statute or a challenge to the
11 applicability of a statute to his conduct. In each such
12 instance, however, a determination that the defendant has
13 accepted responsibility would be based primarily upon
14 pretrial statements and conduct."

11:23:23 15 And so I think that defines the parameters
16 of when, under rare circumstances, when a defendant might
17 actually get acceptance.

18 The Probation Officer disagreed with
19 defendant and she cited the statute that it's not
11:23:54 20 intended to apply to a defendant who puts the Government
21 to its burden of proof.

22 And she indicated, "The defendant has not
23 provided a statement to the Probation Officer wherein he
24 accepted responsibility. Therefore, no reduction for
11:24:13 25 acceptance was applied and the report remains unchanged."

1 And Mr. Brown wrote to, and especially in
2 his sentencing memorandum, to address the issue as well.
3 He -- Mr. Brown, you talked about remorse and the fact
4 that he hasn't shown remorse, and you talked about the
5 ways in which he's acted out and been difficult with law
6 enforcement people and so forth since that time and that
7 was not indicative of remorse.

8 I guess my question is is that relevant, or
9 should we be looking at whether he admitted the crime
10 that he was charged with, and whether he was going to
11 trial because arguably he didn't feel that the law made
12 what he did -- didn't consider it to be a crime of the
13 type that he was charged with?

14 I don't know, but those are the kind of
15 issues I have.

16 So when it gets to your turn -- I'm going
17 to Mr. Ricotta, and when it gets to your turn, of course,
18 you may say anything you wish, but I just raise that
19 question.

20 Yeah.

21 MR. RICOTTA: You want me, Your Honor?

22 THE COURT: You go first.

23 MR. RICOTTA: Yes, Your Honor.

24 I mean, I think this case fits in perfectly
25 to that Note because the situation that we have here is

1 it has always been the contention of counsel on behalf of
2 the defendant that this case factually never really
3 developed as an attempted kidnapping; that all the events
4 that actually transpired were merely preparation for the
5 ultimate event of kidnapping.

6 And when you look at the facts, it appears
7 that with the proper charge -- and I don't tell the
8 Government how to charge their cases -- but with the
9 proper charge, if one was going to take property from
10 another, i.e. the Government, and try and steal their
11 weapons, it would have been attempted robbery, which
12 would have fit the factual pattern.

13 So I've always maintained and part of the
14 Rule 29 was that mere preparation, as the instructions of
15 attempted kidnapping, was not sufficient to take this
16 case to the jury, and that there was not enough
17 substantial steps maintained or proof by the Government
18 that this actually transpired.

19 So we have a legal argument for the Sixth
20 Circuit. Whether I prevail or not, it was my estimation
21 that the legal argument was a proper argument to make and
22 that that was one of the reasons that he didn't accept
23 responsibility and plead guilty in this particular
24 matter.

25 Now, I don't think what the Probation

1 Department has indicated, that it's necessary for him to
2 formally make a statement, because you get into that
3 question of whether I'm jeopardizing his appellate
4 rights, but I would indicate to the Court that, at least
5 at this juncture, if the Court feels it's necessary to
6 show some kind of remorse, he's prepared to make -- make
7 a simple statement that he's sorry for the events that
8 transpired and he's ready to move on and those kinds of
9 things that we normally say in an acceptance of
10 responsibility statement.

11 And I think anytime prior to the sentencing
12 this can be accomplished.

13 So I would also indicate that, well, I
14 think that that would be -- that would suffice, and I
15 guess I would move to the Court.

16 If you want to hear from Mr. Ferguson, then
17 I certainly --

18 THE COURT: Well, no, right now not.

19 Mr. Brown, before I hear from you, I want
20 to ask the Pretrial/Probation Officer something
21 since -- and generally, I'm not trying to put
22 Pretrial/Probation on the spot, and most cases don't
23 require me to ask them anything. They understand that
24 this is -- this case has really more -- in some ways more
25 complexity, I don't mean factual complexity, but it has a

1 lot of nuance to it, and so it's not the kind of thing we
2 see every day.

3 Ms. Merrill, you had indicated that, I
4 think, the basis or primary basis was that he had not
11:28:56 5 made a statement to you during the course of the
6 proceeding, and I just wanted to ask you, I would really
7 go through the report and read what he said and what he
8 didn't say and all that because of what the Guideline
9 says about, you know, pretrial and look at what he says
11:29:15 10 and so forth.

11 And so you've got a pretty thorough report
12 on -- Mr. Duncan Brown has addressed it and Mr. Ricotta,
13 too, but you have a pretty thorough report on his
14 interviews with the agents, what he ultimately said, and
11:29:32 15 so forth, and what he admitted to and so forth.

16 So was the reason that you felt he
17 shouldn't get it is because he didn't give you an
18 additional statement? And if he had, that given all he
19 said before, that that might have qualified him?

11:29:53 20 THE PROBATION OFFICER: Your Honor, the
21 reason why the Probation Office did not give him the
22 acceptance of responsibility was kind of a two prong
23 approach.

24 It is the position of our office or the
11:30:03 25 policy of our office that they must submit a statement to

1 our office, which the defendant did not do.

2 In addition, when we're looking at if he
3 truthfully admitted the conduct that complies with the
4 offense of conviction, he has not done that either.

11:30:20 5 During his interview with the agent, at the
6 end of the interview he did admit guilt at that time, but
7 as we are also looking at his pretrial conduct, that was
8 the pretrial officer's opinion that that was during the
9 investigative stage and not necessarily part of the
11:30:37 10 pretrial stage, and that is why we did not give him the
11 acceptance of responsibility.

12 THE COURT: Okay. So what -- an
13 investigative stage versus pretrial stage, what would
14 be -- what would be the -- what would be the context in
11:30:54 15 pretrial where you -- where you would admit your --

16 THE PROBATION OFFICER: So what we would
17 think is after he was officially charged with the
18 offenses is what we would consider as a pretrial stage.

19 And then when you do look at him in the
11:31:10 20 pretrial stage, he's had two incidents with the U.S.
21 Marshals, and in one of the statements he made a
22 threatening statement.

23 And then also according to the United
24 States Sentencing Guidelines, Application Note 1(B) it
11:31:22 25 talks about voluntary termination from criminal conduct,

1 which he was still engaging in during the pretrial stage.

2 THE COURT: Okay. But I respect the
3 Marshals a lot, you know I do, and they are responsible
4 for protecting all of us, including me, and so I -- you
11:31:39 5 know, but does that relate, the fact that he acted up
6 while he was in their custody, relate to this issue of
7 whether he admitted the crime to which he -- the facts of
8 the crime to which he -- to which he was convicted?

9 THE PROBATION OFFICER: It's more so the
11:32:01 10 policy of our office that since he did not submit a
11 statement to us I would say would be the primary reason
12 as to why we did not give him the reduction for
13 acceptance of responsibility.

14 THE PROBATION OFFICER: Your Honor, could I
11:32:13 15 add one thing?

16 THE COURT: You may.

17 THE PROBATION OFFICER: It does indicate
18 under acceptance of responsibility under the Guidelines
19 that in determining whether a defendant qualifies for
11:32:23 20 acceptance of responsibility under Section A, the Court
21 should also consider his voluntary termination or
22 withdrawal from criminal conduct during his pretrial
23 stages.

24 So that is something that you also should
11:32:36 25 consider; not just whether he actually accepted

1 responsibility, but his conduct during the pretrial
2 stages, which was he threatened his grandmother over the
3 phone and the other incidents he had while he was in
4 custody.

11:32:51 5 THE COURT: And you're referring to 3E1.1.

6 THE PROBATION OFFICER: Application
7 Note 1(B), Your Honor.

8 THE COURT: And you think that that's
9 criminal conduct generally; it's not conduct
11:33:10 10 for -- because every factual context is different but,
11 you know, when we're talking about drug cases, we're
12 talking about whether a person is still associating with
13 known criminals or drug dealers, that would be a clear
14 context.

11:33:28 15 But here, you think if he makes a threat on
16 a family member, that that would be sufficient under (B)
17 to deny him acceptance?

18 THE PROBATION OFFICER: I think that's a
19 consideration that you should at least take into
11:33:46 20 consideration. Behavior is usually at least taken into
21 consideration, among the other factors.

22 THE COURT: All right. And so would you
23 take that into consideration if a person, if a person
24 gave you a statement and saying they have accepted
11:34:16 25 responsibility for the crime they've committed -- that's

1 not our case, but I'm just trying to -- and they agreed
2 that they did everything that happened and that they are
3 sorry for it, and then -- and then they start a fracas in
4 the jail cell where they call their aunt or uncle or
11:34:43 5 somebody and threaten them, that takes away their
6 acceptance of responsibility, do you think?

7 THE PROBATION OFFICER: I believe it can,
8 Your Honor.

9 There is actually Sixth Circuit case law
11:34:53 10 where, say, you have a drug trafficking case and the
11 defendant is out on bond and he continues to -- he's
12 caught with drugs at a traffic stop, that would be a
13 similar situation where that conduct shows that he has
14 not taken his offense seriously and is not really
11:35:14 15 accepting responsibility for what he's done because he
16 has continued to engage in criminal conduct.

17 THE COURT: Okay. So now (A) says if the
18 defendant clearly demonstrates acceptance of
19 responsibility for his offense, and you're saying that if
11:35:31 20 he does other bad things, you can conclude that he hasn't
21 demonstrated acceptance for the particular crime that
22 he's committed?

23 THE PROBATION OFFICER: Correct, Your
24 Honor, because they are telling you appropriate
11:35:46 25 considerations for determining whether a defendant has

1 accepted responsibility are -- include the following and
2 but are not limited to the following, and then they list
3 (A) through (H) for the Court's consideration.

4 THE COURT: And the threats he's making
11:36:17 5 perhaps on the grandmother, the ruckus he allegedly
6 created with -- while he was in custody, those would be
7 viewed as criminal conduct.

8 THE PROBATION OFFICER: That's correct,
9 Your Honor.

11:36:34 10 He doesn't have to be charged in order to
11 view them as criminal conduct.

12 THE COURT: All right. Thanks.

13 Let me go to Mr. Brown.

14 MR. BROWN: Thank you, Your Honor.

11:36:44 15 Just on two points.

16 First, the Government would submit that the
17 threats to the Marshals are relevant and pertinent to his
18 acceptance of responsibility because this crime involved
19 an attempted kidnap of a federal agent.

11:37:00 20 So there is -- and throughout his
21 psychological report submitted by the defendant -- a
22 history of sort of what he had called at least as a
23 juvenile oppositional thinking towards authority. So
24 this is again an ongoing manifestation against the
11:37:16 25 Marshals, and we would say that that is very relevant and

1 should be taken into consideration.

2 The Government would also argue, yeah, also
3 within that report the doctor himself said that the
4 defendant repeatedly denied things, he denied both mental
11:37:34 5 health history --

6 THE COURT: What about this offense,
7 though?

8 MR. BROWN: Well, now, yeah, getting to
9 that, Your Honor.

11:37:39 10 THE COURT: That's what I want to know
11 about.

12 MR. BROWN: Absolutely, Your Honor. I
13 saved that for the last because attached -- and we filed
14 this under seal out of respect for the -- for the parties
11:37:47 15 in this case -- but in the handwritten report filed by
16 the defendant's grandmother -- and again in the
17 typewritten report, it was refuted -- the offense was not
18 about an ongoing family dispute, it was not about
19 something that came up, I think, unrelated to the case.

11:38:08 20 The defendant was on the phone twice and he
21 said, "If you do not get me out of jail I will scalp you
22 like an Indian."

23 THE COURT: Okay.

24 MR. BROWN: And he ties the "If you do not
11:38:18 25 get me out of jail" to the threat of violence. And I

1 think the grandmother even wrote "He will rip out my
2 scalp."

3 And that is tied to the jail, that's tied
4 to why he's in court.

11:38:28 5 THE COURT: I think --

6 MR. BROWN: And it happened after trial.
7 You know, it was not pretrial conduct. It was, in fact,
8 post-trial conduct.

9 THE COURT: Okay. And I didn't mean to
11:38:37 10 interrupt you.

11 I know the grandmother was hopeful not to
12 be -- but you can't help it -- to be not as
13 confrontational as possible because she was concerned and
14 so --

11:38:51 15 MR. BROWN: Which is why we filed it under
16 seal.

17 THE COURT: No, she had other concerns,
18 too, but you have to make the arguments you have to make.

19 MR. BROWN: Right.

11:38:58 20 THE COURT: But and so your argument would
21 be in tandem with the Pretrial/Probation Officer.

22 Let me ask, refresh my recollection,
23 Ms. Merrill, did you put in -- you put in the information
24 about the Marshal in your report.

11:39:15 25 THE PROBATION OFFICER: Yes, I did, Your

1 Honor.

2 THE COURT: Okay. And that was part of the
3 record.

4 THE PROBATION OFFICER: Yes. That's
5 correct.

11:39:19

6 It's under the pretrial adjustment section,
7 all the incidents that were reported to our office are
8 included in that section.

9 THE COURT: All right. Okay.

11:39:33

10 Okay. Based on the totality of the
11 circumstances and the information that's in front of me,
12 I'm going to deny the acceptance of responsibility.

13 There are some things he did say early on
14 with the Marshals when they pressed him. Some he denied,
15 and then eventually he admitted more. And so he had
16 admitted a good portion of what he had done, but even
17 though there was a possibility that he could raise at
18 trial that the offense that he was charged with was not
19 the correct one or that it didn't amount to an offense,
20 he still hasn't shown the requisite orientation relative
21 to his prior conduct as evidenced by the things that have
22 been pointed out by the Pretrial/Probation Officer and,
23 to some extent, by Mr. Brown.

11:39:49

11:40:14

24 I would say, too, that the rule does say
25 that it's a rare circumstance, and in my experience it

11:40:36

1 has -- I'm not sure that it's never occurred, but if
2 it -- I'm not saying it shouldn't ever occur. The Rule
3 makes clear it can. But I don't find that this would be
4 such a rare case that he should get those levels of
11:40:59 5 acceptance.

6 So that's my ruling.

7 And so with that ruling, we would start out
8 at a 32. We would decrease the 32 because it's an
9 attempt, and that would get to 29.

11:41:31 10 So that, it would be 29, offense level 29.

11 Am I calculating that right, Ms. Merrill?

12 THE PROBATION OFFICER: Yes, Your Honor.
13 That is correct.

14 THE COURT: Okay. And then the criminal
11:41:46 15 history category is one.

16 So I will give the parties a chance to
17 object.

18 Any objection to the determination, the
19 rulings I've made and the determination of 29?

11:42:01 20 Mr. Ricotta?

21 MR. RICOTTA: Why, I would just continue to
22 object to the acceptance, Your Honor, but other than
23 that, I think that calculation is correct.

24 THE COURT: All right. Mr. Brown.

11:42:12 25 MR. BROWN: Your Honor, the Government

1 would object, as it did in its written response, that the
2 3A enhancement for official victim should apply, which is
3 a three-level increase.

4 THE COURT: Okay.

11:42:26 5 MR. BROWN: Because it's not inconsistent
6 with reading 3A -- or 2A4.1.

7 THE COURT: Okay. I read -- I read the
8 Pretrial/Probation Officer's response, and I agree with
9 her response, so I'll adopt -- I'll overrule your
11:42:47 10 objection for the reasons she stated in her papers, and
11 so I can allow you to maintain your objection, Mr. Brown.

12 MR. BROWN: Thank you, Your Honor.

13 THE COURT: All right. So it's a 29,
14 criminal history category one.

11:43:02 15 There's no objection to that determination,
16 is that right?

17 MR. RICOTTA: That's correct, Your Honor.

18 THE COURT: All right. And so 29-1 is 87
19 to 108. That's the Guideline range that we start with.

11:43:16 20 And then I'll hear from the lawyers now and
21 the parties.

22 Mr. Ricotta, I read your memorandum that
23 you filed on behalf of Mr. Ferguson. I've also read the
24 report that you provided from Dr. Jeff Rindsberg, a Board
11:43:45 25 Certified Forensic Psychologist who works with The

1 Forensic Group.

2 So I've obviously read Mr. Brown's and
3 Mr. Teresinski's memo on behalf of the United States as
4 well, and I've read a number of letters which I had
11:44:05 5 made -- which I made sure the parties had received, if
6 they had not, from various persons, including ministers
7 and very close relatives.

8 So that's the background. I just wanted to
9 be clear that I'm not starting from scratch, but with
11:44:24 10 that in mind, then, Mr. Ricotta, you may make any
11 comments you wish.

12 MR. RICOTTA: Thank you, Your Honor.

13 Just for purposes of the record, I have
14 marked and would like to introduce at some point at the
11:44:37 15 end of the sentencing hearing the report of
16 Dr. Rindsberg. I've marked that as Defendant's Exhibit
17 1. It's titled The Forensic Group, and it's authored by
18 a psychologist Jeffrey Rindsberg.

19 I provided it earlier to the Court and to
11:44:55 20 the Government, and also to Probation Department. And
21 just as an aside, Your Honor, I was hoping, although it
22 came in after the second disclosure of the PSR, that we
23 could, with the order of the Court, maybe make this part
24 of the probation report itself so that the Bureau of
11:45:16 25 Prisons would have this also to go down with him in

1 addition to the presentence investigation.

2 So I just wanted to put that on the record.

3 I have marked also the letters that you
4 gave recommending that -- different family members and
11:45:37 5 ministers and things on behalf of Mr. Ferguson, I've
6 marked that as Defendant's Sentencing Exhibit 2.

7 I also had a letter that was sent to me
8 from his grandmother Betty Heinz, and I see that Betty
9 Heinz was one that wrote to you indicating on the record
11:45:57 10 that she didn't want to attend the sentencing but she
11 "Remains hopeful that my grandson can get the treatment
12 that is necessary."

13 She indicated the same thing to me, and
14 I've marked that as Defendant's Sentencing Exhibit Number
11:46:15 15 4, and I'll provide a copy to the Court and to the
16 Government.

17 And I've been in close contact with her.
18 You know, even though there is this police report, she's
19 been very supportive of him over the course of this
11:46:29 20 particular matter. In fact, provided him with his
21 clothing during the course of the trial and has almost
22 been in constant contact with me throughout this
23 particular matter.

24 And finally, the last exhibit that I had
11:46:42 25 marked for purposes of sentencing I found interesting,

1 Your Honor, is Defendant's Exhibit 3. It was provided to
2 me by your Deputy Clerk Sharon Romito after the jury
3 returned its verdict.

4 It was a letter that the jury wrote, and in
11:46:57 5 my 41 years of practice I never had this, but it says,
6 for purposes of the record, "From the members of the
7 jury: We think you are a good young man with so much
8 potential and we are confident you will be -- you will do
9 good things. Take this time to do better yourself and
11:47:14 10 become the best person you can be. We wish you all the
11 best in the future. And don't let this define you."

12 THE COURT: Let me, before you go on, just
13 so the record is clear, I did provide that to the
14 Government as well after --

11:47:28 15 MR. BROWN: Yes. So received, Your Honor.
16 Yes.

17 THE COURT: Okay.

18 MR. RICOTTA: We all had that, Your Honor.

19 But I just found it interesting, and I kind
11:47:36 20 of, as I look at the 18, 3553 factors, you know, I
21 haven't had a case where the jury had that kind of input
22 about a defendant.

23 And what I'd like to indicate to the Court,
24 you know, he's at, I guess, 87 to 108, I'd be asking the
11:47:56 25 Court to move off that and variance under 3553. I think

1 if you look at the nature and circumstances of the case,
2 this was, as the Court has characterized it by all -- by
3 all accounts, an unusual factual pattern.

4 You have a young man who was 19 at the time
11:48:17 5 gets involved in this Internet discord and he's
6 contacting these people and making -- making what ended
7 up to be the bulk of the case against him as presented by
8 the Government is all these outrageous statements and so
9 on and so forth, but come to find out that most of the
11:48:37 10 members of the Spartan 75, as the Court will recollect
11 from hearing the case, were all these young kids all over
12 the country that were in this chat room making the same
13 kind of comments back and forth.

14 And I'm not condoning their actions, but I
11:48:56 15 certainly don't think, when we start characterizing 19
16 and 20-year-olds, that sometimes they make decisions that
17 are poor judgment. And I think that was the case here.

18 And we have a kid or young man -- I
19 shouldn't say "a kid" -- a young man that, as
11:49:15 20 Dr. Rindsberg has indicated, has an underlying mental
21 health problem, and I think that's one of the 3553
22 factors that the Court should take into consideration.

23 Can we -- can you blend the kind of
24 sentence that somehow would not demean the seriousness of
11:49:34 25 this case, protect the safety of the community, but also

1 in the same vein give him the opportunity to turn his
2 life around?

3 And often people with mental health illness
4 are in denial, and I think that's the case, as Rindsberg,
11:49:57 5 Dr. Rindsberg indicates, that Mr. Ferguson still does not
6 want to admit that there's an underlying problem here,
7 that I think that all the folks that I've talked to, his
8 family and relatives, that he has a bipolar problem.

9 And I can say, indicate proper to the Court
11:50:16 10 but even my involvement over this period of months, that
11 some phone calls I get he's happy and he's encouraged and
12 we're getting along fine, and the next time I talk to him
13 he's depressed and he's angry and he's frustrated. That
14 seems to be the up and down of the bipolar disease.

11:50:34 15 And I'm not sure, but I think if we could
16 get him medicated, you know, that could even out his
17 problems.

18 So, you know, there's a lot of good things
19 to say about this young man. I don't see where sending
11:50:53 20 him to jail for 10 years would be an appropriate
21 sentence, or thereabouts. I think I indicated to the
22 Court that -- and I don't even remember exactly what my
23 range was, but I believe that 46 to 57 months would be an
24 appropriate sentence in this particular matter.

11:51:14 25 And one of the reasons I said that is

1 because, as I indicated earlier on the record, I've
2 always viewed this case as a robbery where we wouldn't
3 need to necessitate the attempt statute because the
4 attempt statute is right in the robbery section of the
11:51:38 5 Code, and that if he had been charged with that way in
6 that manner and been found guilty, the base offense level
7 would have been 17.

8 And 17 with a criminal history of one would
9 be 24 to 30 months.

11:51:51 10 So actually what I'm asking for is more of
11 what I think the actual crime is. And having said that,
12 I'll defer to the Court.

13 And as I indicated earlier, I indicated to
14 Mr. Ferguson that I didn't want him to say too much about
11:52:15 15 the case, but he's ready at some point to make a
16 statement to the Court regarding his involvement to a
17 certain extent.

18 THE COURT: All right. Thank you.

19 Mr. Ferguson?

11:52:24 20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: As I said before, you don't
22 have to speak. You have a right to speak. But it's up
23 to you whether there's something you want to say?

24 THE DEFENDANT: Yes.

11:52:37 25 Is it okay, can I remove my mask? It's a

1 little bit easier to talk without it.

2 THE COURT: Well, I'm a little worried
3 about you. You told me you weren't -- you didn't
4 take --

11:52:47 5 THE DEFENDANT: All right. Yeah, I get
6 what they're saying about what they're trying, like, to
7 frame -- the frame of the context of the situation.

8 I understand what I said was wrong back
9 then. I do take back what I said. But then I understand
11:53:01 10 I was frustrated, I got a lot of things going on in my
11 life and mainly I went about it the wrong way.

12 I'm not going to fake and act like it
13 didn't happen because obviously we already seen the
14 recordings, and I did say the things and I do regret
11:53:16 15 saying them.

16 But I'm coming to you, I'm not going to
17 hide behind lies. I got to face the music eventually and
18 this is the music I have to face.

19 MR. RICOTTA: You've got to slow down for
20 the court reporter.

21 THE DEFENDANT: And mainly what I'm trying
22 to say is, like, mainly I'm going about what I'm trying
23 to, like, deal with with my mother passing back in 2016,
24 I've been going about it the wrong way, I acknowledge
11:53:33 25 that.

1 I've been on a -- sometimes I be on a good
2 course and next thing I take a stupid turn, and mainly
3 it's caught up to me at this point.

4 I'm mainly trying to say is I understand
11:53:44 5 that I committed -- I understand there's Guidelines that
6 the Government has to do. I understand that you have to
7 come up to a sentence that's your opinion.

8 It's just personally I just feel like,
9 like, this entire time, like, it's not like I was out on
11:53:56 10 bond and, like, this is, like, whatever.

11 I've been -- for the entire time I been
12 incarcerated. All I had to do was think about this
13 day-in, day-out, stare in a mirror and realize what my
14 actions are costing me.

11:54:08 15 And mainly, I don't want this little slip
16 of me acting stupid to cost me the rest of my youth, and
17 I want to still get out and live my life.

18 I still have aspirations. I know this may
19 be farfetched but I still have aspirations for the
11:54:24 20 military to this day.

21 It's just knowing that what I did, it's not
22 even a joke any more. I'm living in here in this setting
23 with grown men, some who are facing life sentences upon
24 life upon life. I realize this is real and you have to
11:54:37 25 take accountability for what you have to say, and I

1 understand that. It's just I don't want to lose the rest
2 of my life for this one little mistake that I made.

3 I understand all the statements, all the
4 time that I already said, like, all things dealing, like,
11:54:50 5 trying to ambush and all that, I understand all that
6 stuff is behind me. I try to put that behind me.

7 While in jail, I been reading more about,
8 like, what's going on in the country today. I listen to
9 Fox News all the time.

11:55:06 10 I understand that mainly I'm just -- sorry.
11 Sorry, I'm like kind of cold.

12 It's -- I understand that mainly that there
13 is issues that need to be fixed, but you can't fix
14 everything with a hammer. And mainly, I was going about
11:55:20 15 it and talking about fixing everything with a hammer, and
16 really I'm the nail that got hammered, really.

17 So what I'm trying to say is is that I
18 understand that, you know, you have to give appropriate
19 Guidelines and have to give me a proper sentence. I'm
11:55:36 20 just hoping that it's something I can do that I can still
21 be able to keep my youth and get out and use what I
22 learned in jail to better myself and the community around
23 me.

24 THE COURT: All right. Thank you.
11:55:44 25 Mr. Brown.

1 MR. BROWN: Thank you, Your Honor.

2 Your Honor, I think after hearing what
3 Mr. Ferguson said, the Government needs to just reassert
4 because, you know, the lack of a firearm had been
11:56:05 5 discussed here today, why there wasn't one on May 8th.

6 Throughout the investigation, I know
7 Mr. Ricotta likes to think of this as a robbery, and as
8 someone who had been involved in the evolution of this
9 investigation it is very lucky it did not turn into a
11:56:22 10 homicide.

11 Your Honor, throughout the investigation
12 the agents worked very hard to mitigate the potential
13 threat that the defendant kept trying to increase.

14 He was the one who created the discord
11:56:32 15 chats. He was the one who made them secret. He was the
16 one who came up with the plans. He was the one who came
17 on May 2nd with a loaded firearm. He was the one who,
18 when they tried to remove the firearm with him so to
19 mitigate that threat, he wouldn't give up the gun, so
11:56:47 20 they came up with the dry run idea on May 8th because in
21 the investigative point of view, based on his words --
22 and they're not just mere words, they're not just, as he
23 described them, little slip-ups and stupid turns, they
24 were words that he followed up with with action.

11:57:05 25 Based on those words and based on those

1 actions, the FBI, thankfully, in their investigative
2 steps, took the steps to mitigate continued and greater
3 harm by doing a dry run.

4 It was not because we were blowing up a
11:57:20 5 robbery into something more. It was because the FBI and
6 our office was trying to mitigate a much more serious
7 crime from happening. And it was a serious crime that
8 the defendant, through the dry run, proved that he wanted
9 to carry out and past the dry run.

11:57:34 10 His own psychological report notes three
11 incidents at NEOCC. There are two threats against the
12 Marshals, which again the Government thinks is very
13 consistent, but then also very telling of the defendant's
14 continued state of mind and his not just opposition, but
11:57:53 15 his willingness to openly defy and confront law
16 enforcement and federal agents, and then the -- and the
17 truly horrific things he says to his grandmother, who is
18 by all accounts from the letters, from the reports, a
19 woman who has the patience of Job and a woman who only
11:58:14 20 wants to try and help the defendant.

21 And the Government is not bringing her back
22 into this or would not -- and we could talk about the
23 conflicts he's had with his father, not to say that he's
24 a bad person, but to reinforce the idea that this is a
11:58:28 25 person who is surrounded by people who have wanted to

1 help him and have done everything in their power to help
2 him, and he meets that help and he meets that attempt to
3 do the right thing for him with anger and threats of
4 violence, be it his family, be it the Marshals who are
11:58:45 5 just doing their job.

6 He says he was the nail that got hammered.
7 He wanted to be the hammer, and he still wants to. He
8 still thinks he can join the military. He still has that
9 same fundamental desire to be in a position where
11:58:59 10 physical violence is his primary recourse for solving a
11 problem.

12 Your Honor, based on his acts, based on his
13 acts up to May 8th and then after May 8th and then this,
14 frankly, I -- we do not object to this psychological
11:59:17 15 report coming in because it has some very, very troubling
16 conclusions.

17 And the Government would argue that this
18 was done in mitigation, it's in fact titled "Mitigation
19 Report." This is not a full psychological workup. This
11:59:31 20 is not a diagnosis. This is just pointing out third
21 rails or things that might be good about this young man.

22 But what he shares is "Mr. Ferguson
23 significantly has significantly more pathology than he
24 reports. He has a lack of insight or pure denial about
11:59:49 25 underlying emotional and psychological problems."

1 He has -- and they say that the conclusion
2 is, "Either way, his record and history suggests
3 significantly more mental illness than he reported."

4 Your Honor, the sentence -- the Guidelines
12:00:06 5 here are 87 to 108. The Government would argue that 108
6 is appropriate, 108 months is appropriate for two
7 reasons.

8 One, because of the seriousness of this
9 crime. It was not a robbery. It was much, much more
12:00:18 10 than that, where people could have potentially been in
11 very, very serious danger, had not proper investigative
12 steps been taken.

13 But it also -- 108 months, I think nobody
14 in this Court here, nobody would argue that going to
12:00:34 15 Butner for evaluation and intake and then going to one of
16 the other facilities is the appropriate mode of
17 incarceration for this young man.

18 And for the last six years, eight years, 10
19 years of his life, unfortunately, everybody around him
12:00:49 20 had tried to help. His schools, his family, everybody
21 has tried to help him, and at every turn he has denied
22 that help, and that led to not a slip-up, not a mistake,
23 not "My words being twisted or taken out," certainly not
24 a joke. As he said, he realizes it's not a joke any
12:01:07 25 more.

1 This is the, unfortunately, for society and
2 for the agents who were potentially in harm with this,
3 this is the last attempt, but for him it's a very good
4 attempt. This is the attempt where he could have nine
5 years of mental health treatment; nine years of mental
6 health treatment that he himself is unwilling to seek out
7 for himself.

8 Unfortunately, the defendant cannot be
9 trusted to take care of himself. This is an opportunity
10 where incarceration, nine years, 108 months, is a long
11 period of time, but it's a period of time where with
12 proper psychiatric care maybe some of the good things in
13 the psychological report can be realized.

14 But to release him to say, "Okay, fine,
15 figure it out yourself," or, unfortunately, turn him back
16 to sincerely well-meaning people, family members who are
17 just not, unfortunately, equipped to do what needs to be
18 done, would be condemning him to even greater failure and
19 condemning society to potential greater harm, Your Honor.

20 That is why the Government is asking for
21 108 months.

22 Thank you.

23 THE COURT: Thank you, counsel.

24 Mr. Ferguson, my responsibility is to
25 impose a sentence that's sufficient but not greater than

1 necessary to comply with the purposes of the statute.

2 And in doing that, I look at a statute 18,
3 United States Code, Section 3553(a) and I get to look at
4 the Guideline range, but I get to look at things beyond
12:02:53 5 that, and that's why I've been hearing from your counsel,
6 from you, counsel for the United States.

7 I have to look at the nature and
8 circumstances of the offense, I have to look at your
9 history and characteristics, then I have to look at the
12:03:09 10 need for the sentence imposed which should reflect the
11 seriousness of the crime which is also meant to promote
12 respect for the law and is a just punishment at the same
13 time.

14 And the sentence is also meant to afford
12:03:23 15 adequate deterrence to criminal conduct, to protect the
16 public from further crimes by you and, to the extent
17 possible, to provide you with needed
18 educational/vocational training, medical care and other
19 correctional treatment in the most effective manner. And
12:03:38 20 I have to look at the kinds of sentences available.

21 And this is not -- this is not an easy
22 sentencing decision for me because of the facts and
23 circumstances and because of the history and
24 characteristics of the defendant; also trying to figure
12:03:58 25 out what's going to help to deter.

1 But in terms of the nature and
2 circumstances of the offense, I was here when the case
3 was tried, I read the report and so forth. It's a
4 serious crime, there's no question about it.

12:04:18 5 There are some things about the crime which
6 are a bit different than most cases, but this is what, of
7 course, the agents are there to do is to work up cases,
8 to work in cases and so forth.

9 But what I -- what was involved here was
12:04:38 10 you clearly got into some, Mr. Brown, some -- I'm
11 sorry -- Mr. Ferguson, some serious conduct during your
12 chat and with the other people on that network that
13 you -- people you were talking to.

14 Turns out most of them were teenagers, they
12:05:02 15 weren't adults, they weren't people that's been shown
16 were really prepared, ready to move ahead and become part
17 of a group that could carry out what was being planned.

18 I didn't see anything that suggested that.
19 And, of course, they didn't have to be witnesses, none of
12:05:24 20 them were witnesses, and so what I saw were the law
21 enforcement agents saw you engaging in this violent
22 oratory, this chat, about, you know, carrying out some
23 stealing property from law enforcement and perhaps
24 harming them or killing some of them or all, and that's
12:05:43 25 part of your language and rhetoric.

1 And they said, well, you know, we can't
2 allow that to happen, we can't have that to go on, so
3 they got in it.

4 And candidly, even though I concluded both,
12:05:55 5 you know -- I mean the jury concluded that you committed
6 this crime of attempted kidnapping, and I overruled your
7 counsel's motion post-trial, you know, based on the
8 reasons he raised, the agents were dead in the middle of
9 this and they were helping you facilitate the possibility
12:06:23 10 of carrying out the crime.

11 Now, don't raise your hand because there's
12 nothing for you to say now. I'm speaking.

13 If you disagreed with what I said, which I
14 would find very strange anyway, but I said they were very
12:06:41 15 involved in helping you prepare what you indicated that
16 you wanted to do. And it's not that you weren't involved
17 to the extent that you were culpable. I'm not saying
18 that you didn't mean to do what you claimed you were
19 going to do.

12:06:59 20 I'm saying that the context was that it's
21 not clear as to what you might have done. Maybe you
22 would have done something like this if they had not
23 interfered, or maybe you would have been too inept to
24 carry it out, but we can't worry about that because you
12:07:15 25 can't -- you can't sit there and make plans like this

1 relative to law enforcement.

2 And so they got in, and I'm not criticizing
3 their getting in, but it is part of the context of this
4 case, it's part of the context of the case.

12:07:28 5 They were -- they were ahead of you. I
6 mean, they knew more, they knew what they were doing,
7 they knew it wasn't going to come off, and so they could
8 work with you and you worked right along with them. And
9 so you're responsible for that.

12:07:41 10 But that's still part of the nature and
11 circumstances of the offense. It wasn't -- you weren't
12 out there by yourself knowing exactly what to do, but you
13 had a gun. You talked about using it. You never got to
14 the stage really of grabbing anyone or trying to take one
12:08:01 15 into possession. That thing got called off.

16 But that's part of the nature and
17 circumstances of the offense. It's not the worst, it's
18 not the worst set of circumstances I've seen. It's a
19 serious set of circumstances, and so that's part of that.

12:08:14 20 The other -- and the record will reflect
21 that, that they were talking to you about it and so forth
22 and they said they were giving you opportunities to say
23 no, but, meanwhile, they're supposed to be your soldiers,
24 but they were your soldiers, but they were asking you
12:08:28 25 questions about whether you wanted to back off or "Maybe

1 we shouldn't go forward" and so forth and helping you
2 facilitate practice runs and so forth.

3 And where are your other soldiers? I don't
4 see them. And those are people in the chat. I mean,
12:08:44 5 very minimal. I'm not saying you had no, no backing
6 other than them. You did, but not much.

7 History and characteristics of the
8 defendant. This is -- this is another hard part. I can
9 look at your background and circumstances. I can take
12:09:01 10 those into consideration. Not everyone has the same
11 upbringing. Some people have it rougher than others.
12 Some people have rougher mountains to climb, so to speak,
13 and you don't get off doing crimes because you had a
14 rough upbringing, but at the same time the Court can
12:09:20 15 consider those kinds of factors.

16 And one thing I do, one constant I do see
17 in your case is that you've got mental health issues, and
18 they are mental health issues that are serious that have
19 not -- are not being resolved. And the cry of all your
12:09:43 20 family members and people that write for you is -- it's
21 not even about the sentence, it's about try to get him
22 something that will address these mental health issues;
23 that they are paramount.

24 And from my view of you and just -- and
12:10:03 25 reading your reports and so forth, I think you do have

1 serious mental health issues that, as the report said,
2 that defendant proffered, put forward, that you are not
3 recognizing, that you are not acknowledging to a
4 significant extent.

12:10:29 5 Now, the record supports that you had
6 mental health issues. Some of the relatives talk about
7 bipolar disorders -- disorder diagnosed when you were
8 ten. There were certainly two hospitalizations, as I
9 recall it, that related to mental health issues.

12:10:52 10 One was Belmont Pines hospital record. And
11 let me find the other. The other one was at Windsor
12 Laurelwood.

13 And both of them really describe -- you're
14 a very young man now, but describe the mental health
12:11:23 15 issues that you had from the period when you were, I
16 would say, 14 up until, you know, not too long ago.

17 And so you've had those kinds of problems.
18 Bipolar disorder is one thing, but there are other, other
19 problems which have manifested themselves throughout most
12:11:52 20 of your life.

21 Now, some of that may have been brought on
22 by the death of your mother. I don't know, and I'm not
23 trying to tie those two together, but it certainly didn't
24 help that when you lost her, that -- because you lost a
12:12:10 25 very significant person in your life.

1 And I'm sure that affected you. It may
2 have exacerbated some of the mental health issues.

3 Grandmother, regardless -- and one thing
4 that tells me that you've got mental health issues, not
12:12:30 5 because you say things about your grandmother the way you
6 do, but because it's just -- I don't -- it's not based on
7 anything real or any basis for you to be upset with her
8 based on everything I said on the record.

9 It partakes of someone who has some mental
12:12:48 10 health issues.

11 That's the very statement that has been
12 attributed to you relative to her suggests that to me and
13 further confirms that that's -- that's a big issue.

14 Your grandmother does not want any
12:13:07 15 confrontation. She cares deeply about you. She doesn't
16 want to say anything that sets you off. That's a concern
17 of hers. But she wants the best for you. She wants the
18 best for you, but she is deeply concerned. She doesn't
19 want to upset you. Why? Because you have the conclusion
12:13:33 20 from all the people around is that there are mental
21 health issues that need to be addressed.

22 Now, this is not a put-down, Mr. Ferguson.
23 It's not a put-down. When a person has mental health
24 issues to address, doesn't mean that they are not a
12:13:49 25 normal -- not a human being like anybody else.

1 But when you realize that there are things
2 that you have to address, if you don't address them, then
3 they're going to be bigger problems.

4 And so what I'm trying to balance in my
12:14:03 5 sentencing is what's appropriate in terms of punishment,
6 and what can we offer in this system that addresses
7 mental health issues because we could throw the book at
8 you and have you come out and then do -- and then act on
9 your mental health issues or have them exacerbated in
12:14:28 10 prison. And that could definitely happen.

11 So I don't know if we have a good mix in
12 our system for dealing with serious crimes and
13 understanding that, but also accounting for the mental
14 health role that's involved and trying to address that so
12:14:44 15 that that won't be part of the deterrent effect going
16 forward.

17 And that's what I'm facing in your case.

18 You don't have any criminal history.
19 You've done some things, acted up, you've done some bad
12:15:01 20 things, but you don't have any criminal history in terms
21 of -- in terms of the criminal history category. You're
22 a category one.

23 Now, I read the report about Indiana and I
24 read the report about being in the Marshals' custody and
12:15:18 25 all the other things, so don't think that I don't know

1 about them and don't think that I don't think they are
2 serious, but you didn't come here with a heavy criminal
3 history record.

4 And so I'm struggling. Serious crime, but
12:15:39 5 circumstances are that you were playing with fire.
6 Whether you could have pulled anything off, candidly, you
7 did sound like you were in a fantasy land. That's what
8 it sounded like to me when I heard, in a fantasy land,
9 but a fantasy land can cause people to die, can cause
12:16:00 10 people to be hurt, but that's what you were playing,
11 games. And you've been playing those, I read in the
12 record, all your life, and that's what you got caught up
13 in.

14 So you were there talking to these 12 and
12:16:17 15 13-year-olds saying things that were very dangerous and
16 then the agents say, "Well, let's play it out." And you
17 kept playing it out and here's where you are.

18 So mental health problems. Mother dies
19 when you were very young. Eventually discord in the
12:16:38 20 home. Placed in foster care. Eventually having
21 hospitalizations for mental health issues. It's been
22 a -- it's been a tumultuous -- and negative interactions
23 with family members in a volatile way. It's a problem.

24 So let me just come to a conclusion here
12:17:04 25 and go ahead and sentence you.

1 I've read the psychological report.

2 Mr. Brown mentioned that the report said that you're not
3 coming to grips with how serious the mental health issues
4 are. I mentioned that, too. I don't know that that cuts
12:17:29 5 against you as much as he thought, but it's a problem to
6 be addressed.

7 Let me make sure I've got what I need here.

8 Looking for my -- I'm looking for my blue
9 pages here, Sharon. No, I don't see it. (Pause)

12:18:43 10 I don't normally get comments from jurors
11 and the question is how much is that worth, but it was
12 their opinion after looking at everything. I think
13 they -- they knew that you, Mr. Ferguson, were involved
14 in something very serious, but I think they felt you
12:19:04 15 were -- and probably gave you more doubt than they should
16 have -- but I think they felt that you just got caught up
17 in something and being drug along there, and that you
18 weren't really a bad person. That's what the jury was
19 saying.

12:19:17 20 And so I shared it with the lawyers because
21 I had never -- never received anything like that. I've
22 gotten notes before.

23 I had misplaced a sheet that I needed, and
24 my deputy is picking that up so I can finish up the
12:19:36 25 sentence.

1 (Pause) .

2 Mr. Abraham, if we refer him to Butner and
3 then if Butner decides that he needs to be placed in a
4 facility for those who have mental health issues that
12:20:14 5 need to be addressed, they have other facilities that
6 then can address those issues?

7 THE PROBATION OFFICER: Yes, Your Honor.
8 They have federal medical facilities all across the
9 United States. I have a list of them here, but there's
10 numerous and they're --

11 THE COURT: Well, they will determine which
12 one to go to?

13 THE PROBATION OFFICER: They will, Your
14 Honor.

12:20:34 15 THE COURT: I want to stress in this case,
16 like I have stressed in almost any case regardless of the
17 sentence that I put on, that I think this is one where
18 the Bureau needs to take serious the notion that there
19 are problems here that need to be addressed.

12:20:51 20 He's a very young man, and if he lives as
21 long as most of us, there's a lot of life left, but we
22 want to minimize the potential that he's going to cause
23 harm to anyone, especially based on mental health issues,
24 related issues. And I have concerns.

12:21:10 25 THE PROBATION OFFICER: Yes. Thank you,

1 Your Honor.

2 THE COURT: All right. Pursuant to the
3 Sentencing Reform Act of 1984, it's the judgment of this
4 Court that defendant Christian Ferguson is hereby
5 committed to the custody of the Bureau of Prisons for a
6 term of 50 months on Count 1 and 50 months on Count 2, to
7 be served concurrent.

8 Upon release from imprisonment, you shall
9 be placed on supervised release for a term of three
10 years.

11 Within 72 hours of release from the custody
12 of the Bureau of Prisons, you shall report in person to
13 the U.S. Pretrial Services and Probation Office in the
14 district to which you are released.

15 I've determined you're not able to pay a
16 fine and, therefore, I'm going to waive the payment of a
17 fine.

18 You will be required to pay a special
19 assessment of \$200 due immediately.

20 Let me just say in terms of this 50-month
21 sentence that I think I've articulated the reasons why,
22 but I will be clear. I think -- I think you need, at
23 this point in your life, a significant sentence. I think
24 50 months as your first major sentence is significant.

25 I think if we can get the mental health

1 issues addressed, then I think that you'll be able to
2 move forward. And I think the mental health is a huge
3 contributing factor to the problems you're having, and
4 I've spelled that out and I've made it clear.

12:22:50 5 From all I've gotten from family members,
6 it didn't start yesterday. From the way you interact
7 with them, things you've said to them and the
8 context -- and in that context and the report by the
9 person who did the evaluation for sentencing, and the
12:23:05 10 fact that you've been incarcerated -- not incarcerated --
11 you've been detained twice for mental health reasons at
12 facilities where you had to receive treatment, and just
13 your general demeanor and the words you use in the
14 context, there are mental health issues, and they point
12:23:24 15 to them.

16 And that's why I want to stress to the
17 Bureau that this is -- this is something I think they
18 should take seriously.

19 You're going to be required to pay a
12:23:34 20 special assessment of \$200 which is due immediately.

21 When you're on supervision, you must comply
22 with the mandatory and standard conditions that have been
23 adopted by this Court and set forth in Part D of the
24 presentence investigation report.

12:23:44 25 You must comply with the following

1 additional conditions.

2 The periodic drug testing mandated by the
3 Violent Crime Control and Law Enforcement Act of 1994 is
4 hereby suspended because I've determined that you pose a
12:23:55 5 low risk of future substance abuse.

6 You must undergo a mental health evaluation
7 and/or participate in a mental health treatment program
8 if that's found to be warranted, and you must follow the
9 rules and regulations of the program. The Probation
12:24:08 10 Officer, in consultation with the treatment provider,
11 will supervise your participation in the program.

12 You must take all mental health medications
13 that are prescribed by your treating physician.

14 If you're on supervision you must submit
12:24:19 15 your person, property, house, residence, vehicle, papers,
16 computers, other electronic communication, data storage
17 devices and media, office to a search conducted by the
18 United States Probation Officer.

19 Failure to submit to a search may be
12:24:31 20 grounds for revocation of release.

21 You must warn any other occupants of the
22 premises that you occupy they may be subject to a search
23 pursuant to this condition.

24 Now, the Probation Officer may only conduct
12:24:40 25 a search if they have reasonable suspicion that you

1 violated a condition of supervision, and they must set
2 out the areas to be searched which contain evidence of
3 the violation.

4 And any search must be conducted at a
12:24:51 5 reasonable time in a reasonable manner.

6 You must not access the Internet except for
7 reasons approved in advance by the Probation Officer.
8 And you must allow the Probation Office to install a
9 computer monitoring software on any computer that you
12:25:05 10 use.

11 To ensure compliance with the computer
12 monitoring condition, you must allow the Probation
13 Officer to conduct initial and periodic unannounced
14 searches of any computers subject to computer monitoring.

12:25:16 15 These searches shall be conducted for the
16 purposes of determining whether the computer contains any
17 prohibited data prior to installation of the monitoring
18 software, to determine whether the monitoring software is
19 functioning effectively after its installation, and to
12:25:30 20 determine whether there have been attempts to circumvent
21 the monitoring software after its installation.

22 You must warn any other people who use
23 these computers that the computers may be subject to
24 searches pursuant to this condition.

12:25:41 25 And you must warn any other people who use

1 these computers or devices capable -- capable of
2 accessing the Internet the devices may be subject to
3 searches pursuant to this condition.

4 A Probation Officer may conduct a search
12:25:57 5 pursuant to this condition only when reasonable suspicion
6 exists that there's a violation of a condition of
7 supervision and that the computer or device contains the
8 evidence of this violation.

9 And any search will be conducted in a
12:26:09 10 reasonable time and in a reasonable manner.

11 You will be required to cooperate, as all
12 defendants are required to cooperate, in the collection
13 of DNA as directed by the Probation Officer.

14 And I'm going to recommend to the Bureau
12:26:20 15 that you be placed in an intensive substance abuse
16 program -- I'm sorry, strike that -- that you be
17 placed -- no, there's no requirement, no need for that.

18 I'm going to recommend to the Bureau that
19 you be given credit for time served.

12:26:34 20 MR. RICOTTA: Your Honor, may I, on the
21 residential drug program?

22 THE COURT: Sure.

23 MR. RICOTTA: It seems apparent from that,
24 from Dr. Rindsberg's report, that there may be an
12:26:45 25 underlying substance abuse problem that he's still in

1 denial, and I think it may be good to have at least an
2 evaluation for that.

3 MR. BROWN: Your Honor, there's nothing in
4 the case from the very beginning to suggest substance
12:26:57 5 abuse.

6 I think mental health is really the focus
7 here that should not be minimized or lost track of.

8 MR. RICOTTA: Dr. Rindsberg indicates an
9 underlying problem that he's not addressing so.

12:27:13 10 THE COURT: What page is that on?

11 MR. RICOTTA: I'm sorry.

12 MR. BROWN: Page 9.

13 Either a significant drug problem or
14 overreporting his problem, so it could go either way.

12:27:36 15 I think -- I think the mental health
16 evaluation will be the one that really determines what's
17 going on with him because --

18 THE COURT: Okay. Let me just back up then
19 on this one.

12:27:50 20 I had indicated -- I'm going to remove the
21 mandatory drug testing and suspend it, and I'm going to
22 require him to be tested, first one after 15 days of
23 supervision and periodic tests thereafter.

24 And then, of course, we always have
12:28:23 25 discretion, you do, the Pretrial/Probation Officer, that

1 if it turns out that he doesn't appear to have a problem,
2 you can then not test him, but to err on the side of
3 caution.

4 And I'll recommend to the Bureau that if
12:28:42 5 they find it appropriate, that he be placed in a
6 substance abuse program.

7 All right. Then I'm going to recommend to
8 the Bureau you be given credit for time served.

9 And I'm going to recommend that you be
12:29:00 10 housed at Butner initially for a mental health assessment
11 with a strong recommendation by the Court that
12 they -- they make such an assessment and place you at an
13 appropriate mental health facility and address the
14 problems that have been identified in the record and
12:29:24 15 by -- by the Court.

16 So that's what I'm going to do,
17 Mr. Ferguson. I think it's a very fair sentence. It's a
18 just sentence.

19 I think every person is different. Every
12:29:39 20 set of circumstances are different. And that's the
21 balance I struck based on the serious conduct that you
22 engaged in, but balancing that off against the mental
23 health issues that I see, and I think that that's going
24 to be the key as to whether you can get that kind of
12:29:58 25 treatment that you need.

1 And I strongly think that that's a
2 substantial portion of the problems that you have, even
3 though you've engaged in criminal conduct.

4 And it's a fantasy land for you. You were
12:30:12 5 in it. My understanding from some of the things I read
6 is that you've been on these games for years, and this
7 was just another one. And so it's kind of between
8 fantasy and reality, and the officers helped you flesh
9 that out so it became a reality, but I think that they
12:30:35 10 did play a significant role in that. And that's not to
11 criticize them at all, but they got you to a point where
12 they could get you to act out so they could then get you
13 charged.

14 And when you got charged, that helped
12:30:50 15 address the situation. I think this does it enough. I
16 think it's enough. I think this does it, given the facts
17 and circumstances.

18 And so that's the sentence I'm going to
19 impose.

12:30:59 20 Mr. Ricotta, any objections or anything I
21 overlooked?

22 MR. RICOTTA: No, Your Honor.

23 Other than I think he's got to be
24 advised -- I don't know if he wants to appeal, but he
12:31:08 25 should be advised.

1 THE COURT: I'm going to advise him.

2 MR. RICOTTA: Oh, okay.

3 THE COURT: But I wanted to see what you
4 were going to say first about any further objection or
12:31:14 5 anything I overlooked, and then I got to ask Mr. Brown,
6 and then I'll finalize my sentence.

7 MR. RICOTTA: The only thing I would move
8 is that my exhibits be entered in, my sentencing Exhibits
9 1 through 4 for the record.

12:31:27 10 THE COURT: All right.

11 MR. RICOTTA: That's all I have, Your
12 Honor.

13 THE COURT: Okay. Mr. Brown.

14 MR. BROWN: Thank you, Your Honor.

12:31:31 15 The Government would preserve its
16 objections and also object to the sentence as being below
17 the Guidelines and just preserve that for the record as
18 we determine -- in the event of any appeal.

19 Thank you.

12:31:41 20 THE COURT: All right. I understand.

21 So I will impose the sentence that I
22 indicated I would.

23 And, Mr. Brown, you have a right to appeal
24 from the Judgment of Conviction.

12:31:50 25 When I tell you you have a right to appeal

1 I'm not saying whether you have good grounds or bad
2 grounds for appeal. Judges don't say that and Judges
3 can't, so I don't give any opinion. My responsibility is
4 limited, it's limited to making sure that you know if you
12:32:05 5 wanted to appeal, you have to file what's called a notice
6 of appeal within 14 days of the Judgment of Conviction.

7 Do you understand that?

8 (Pause) .

9 THE COURT: You, yes.

12:32:15 10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And if you wanted to appeal and
12 you could not afford counsel, I would appoint counsel for
13 you.

14 Do you understand that?

12:32:20 15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. Mr. Ricotta, would you
17 accept the responsibility, if he wanted to file an
18 appeal, of filing a notice for him?

19 MR. RICOTTA: Yeah, but I would prefer,
12:32:29 20 Your Honor, that you would assign somebody to do the
21 appeal to review my work, too, instead of me doing the
22 appeal.

23 THE COURT: But would you -- right. But
24 could you file the notice?

12:32:38 25 MR. RICOTTA: Yeah, I can do the notice.

1 THE COURT: And then what we do is we can
2 determine, we can have someone else do the appeal, but
3 I'd like you to file the notice if he wants to appeal.

4 MR. RICOTTA: And he may not want to
5 appeal.

6 I don't know. We'll discuss it, Your
7 Honor.

8 THE COURT: All right.

9 MR. RICOTTA: I'll take care of that.

10 THE COURT: Yeah, I'm not suggesting he
11 wants to appeal, should or shouldn't. None of that.

12 I'm just making sure he knows about his
13 rights and I want to make sure that, at least if he does,
14 that, you know, that doesn't slip through the cracks and
15 then, you know, from there the lawyer who gets to
16 represent him from there will take it from there.

17 MR. RICOTTA: Not a problem.

18 Thank you.

19 THE COURT: All right. Okay. Well, it's
20 been a long one, Mr. Ferguson, but it's required
21 sometimes.

22 I've spoken honestly to you and I've spoken
23 honestly to everybody here because we've got crimes being
24 committed, but we've got other things we shouldn't
25 ignore.

1 I would feel remiss if I didn't -- if I
2 ignored this mental health issue. And I think that's
3 what everybody wants for you, all your relatives and
4 everybody I've got information from says, "It's a mental
12:33:51 5 health problem; make sure he gets the help he needs."

6 And so you're going to be punished, you're
7 going to be in prison, but hopefully you get the mental
8 health treatment you need. And I think if so, then you
9 can move forward in life and maybe realize some of the
12:34:07 10 positive goals that you have will develop.

11 So that's all I have.

12 MR. RICOTTA: Thank you, Your Honor.

13 THE CLERK: All rise.

14 (Proceedings concluded at 12:34 p.m.)

12:34:48 15 - - - -

16 C E R T I F I C A T E

17 I certify that the foregoing is a correct
18 transcript from the record of proceedings in the
19 above-entitled matter.

20
21 /s/Susan Trischan

22 /S/ Susan Trischan, Official Court Reporter
23 Certified Realtime Reporter

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